

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
REELZCHANNEL, LLC	)	CG Docket No. 06-181
	)	CGB-CC-0598
Petition for Partial Exemption Closed	)	
Captioning of the Closed Captioning Rules	)	

**REPLY OF REELZCHANNEL, LLC**

ReelzChannel, LLC ("ReelzChannel"), by its attorneys, hereby submits its Reply to the "Opposition to the Petition for Exemption from Closed Captioning Requirements Filed by ReelzChannel" (the "Opposition") submitted jointly by the following seven entities: Telecommunications for the Deaf and Hard of Hearing, National Association for the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, Hearing Loss Association of America, Association of Late-Deafened Adults, Inc., American Association of People with Disabilities, and California Coalition of Agencies Serving the Deaf and Hard of Hearing (collectively, the "Commenters").

ReelzChannel presumes that the Opposition is directed to ReelzChannel's "Petition for Partial Closed Captioning Exemption" filed September 27, 2006 (the "Petition"), although the Opposition is unclear about that.<sup>1</sup> As demonstrated below, the Opposition should be denied for three significant reasons: (1) it does not oppose the actual and very limited request made by

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<sup>1</sup> Commenters have filed three different versions of its "Opposition" dated March 13, 2007, March 21, 2007, and March 26, 2007, all apparently opposed to the Petition. All three versions are substantially similar but not identical to each other. Unless otherwise indicated in this Reply, ReelzChannel responds to the Opposition dated March 26, 2007. Pursuant to *Public Notice*, DA 06-2329 (November 21, 2006), Commenters had until March 27, 2007 to oppose the Petition, so all three of their Oppositions were filed timely. That *Public Notice* also provided ReelzChannel with 40 days within which to submit its Reply. Under Section 1.4(j) of the Commission's rules, the deadline for ReelzChannel's Reply in this proceeding is May 7, 2007, whether calculated from either of March 26 or March 27, 2007. Accordingly, this Reply is filed timely.

ReelzChannel, (2) it fails to offer any factual support contrary to the position taken by ReelzChannel and (3) in keeping with the lack noted in previous point, the Opposition is unsupported by a valid affidavit. Thus, the very limited exemption of the closed captioning rules requested by ReelzChannel should be granted as undisputed in fact and specifically unopposed.

### **The Commentors Have Not Opposed ReelzChannel's Exemption Request**

ReelzChannel requested a very limited exemption of the Closed Captioning rules, that being, the "pass through" of existing closed captioning under Section 79.1(c) of the Commission's rules. (Petition, p. 1, p. 4) In no version of the Opposition do the Commenters even mention that very specific and narrowly tailored request, and accordingly, Commenters do not state any opposition to that request. Thus, ReelzChannel's request to be exempted from the pass through requirement under Section 79.1(c) of the rules should be granted immediately.

ReelzChannel's request for exemption from Section 79.1(c) is justified fully. As explained in the Petition, and supported by a valid declaration,<sup>2</sup> ReelzChannel is a new, start up, video programming service, which launched nationally in late September 2006, substantially offering new, original programming. (Petition, pp. 1-2) As a completely new video service, ReelzChannel is subject to the general exemption from closed captioning obligations for its first four years of operations under Section 79.1(d)(9). (Petition, p. 2) Although that closed captioning exemption for new video programming networks clearly is automatic, Commenters generally agree that ReelzChannel qualifies for it. (March 13 Opposition, pp. 2, 6)

ReelzChannel demonstrated that the vast majority of its programming would be new and original. (Petition, p. 2) Therefore, all of that programming would be exempt from closed captioning requirements for the first four years of ReelzChannel operations. As described in the

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<sup>2</sup> Section 1.16 of the Commission's rules permitted ReelzChannel to use a declaration to support its Petition in lieu of an affidavit. As shown later in this Reply, the Commenters failed to provide either a valid affidavit or declaration.

Petition, ReelzChannel anticipated distribution of only one preexisting program series which might contain some closed captioning. (Petition, pp. 2-3) That small fraction of ReelzChannel programming would be subject to the closed captioning pass through requirement.

ReelzChannel established before the Commission that it was committed to enormous start up costs and that the additional costs of passing through a tiny amount of preexisting closed captioning warranted the limited waiver of Section 79.1(c) as an undue burden.

ReelzChannel demonstrated that grant of its Petition would serve the public interest by promoting a new source of original programming by an independent network, not affiliated, owned or controlled by any of the major media conglomerates.<sup>3</sup> Clearly, such support would advance the public interest goals of media ownership and programming diversity. In addition, the limited waiver would have little practical effect because it would affect a small fraction of ReelzChannel's programming service which otherwise has no closed captioning requirement for its first four years. Thus, grant of the limited exemption would cause no material harm.

The Commenters do not even address, nor directly oppose, any of ReelzChannel's specific justifications in support of its exemption from Section 79.1(c) of the Commission's rules. They generally oppose the grant of any waiver without regard to specific merits or facts, which is a policy position, and insufficient as a challenge to the specific exemption request of ReelzChannel.

### **Commenters Provide No Evidence to Support Their Opposition**

Consistent with their failure to recognize the actual request for exemption of ReelzChannel, the Commenters do not address any evidence directly relevant to ReelzChannel.

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<sup>3</sup> Petition, p. 4. The Commission's policy is to be protective of program diversity under its scheme for broadcast ownership. *See 2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13631 (2003) ("We conclude that program diversity is a policy goal of broadcast ownership regulation.").

For example, by generally (but not specifically) alleging that the Petition fails to demonstrate undue financial burden, all three versions of the Opposition do no more than recite factors which might be applicable generally to a closed captioning exemption request. Commenters recite the following four factors which hypothetically might be necessary, asking if a petitioner:

- (1) sought competitive pricing from multiple sources;
- (2) submitted copies of correspondence received from such captioning companies, including a range of quotes;
- (3) provided details regarding financial resources; and
- (4) sought any means to recoup the cost of closed captioning, such as through grants or sponsorships.<sup>4</sup>

The factors recited above concern a request to be exempt from an obligation to produce closed captioning. They substantially are irrelevant to ReelzChannel's request to be exempt from the pass through requirement. Commenters have not opposed ReelzChannel's actual request.

### **The Opposition is Unsupported by a Valid Affidavit**

Commenters ask for a waiver of Section 79.1(f)(9) of the Commission's rules which requires them to support their Opposition with an affidavit.<sup>5</sup> That waiver requested by the Commenters proves that they have not even attempted to challenge the facts provided by ReelzChannel in support of its Petition. The Commission is required to act upon the record before it. The only evidence provided has been by ReelzChannel. The Commenters have passed on their opportunity to challenge the specifics of ReelzChannel's position. Indeed, the "certifications" which are offered in support of the three Oppositions are neither sworn testimony or unsworn testimony subject to the penalty of perjury. They cannot be considered evidentiary support.<sup>6</sup> Accordingly, the Commission simply cannot grant the Opposition because it lacks the record to do so.

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<sup>4</sup> March 13 Opposition, p. 4, March 21 Opposition, p. 4, March 26 Opposition, p. 6 (citations omitted).

<sup>5</sup> March 13 Opposition, p. 6, March 21 Opposition, p. 6, March 26 Opposition, p. 8.

<sup>6</sup> See Section 1.16 of the Commission's rules.

## Conclusion

ReelzChannel has requested a limited exemption of the closed captioning rules, the pass through requirement under Section 79.1(c). ReelzChannel is committed to meeting all of its closed captioning obligations no later than the end of its four year start up period. (Petition, **p. 4**) The Commenters acknowledge that ReelzChannel "appears committed to complying with the closed captioning rules."<sup>7</sup> Therefore, ReelzChannel renews its request that its Petition be granted, or in the alternative, if the Commission is inclined to deny the Petition, despite any specific opposition to it, then ReelzChannel should be afforded at least six months advance notice of such an action so that it may make the early financial and technical investments that would be required to establish the system architectures required to pass through closed captioning in an orderly an efficient way. (Petition, pp. 4-5) The Commenters appear to be supportive generally of 180 days of advance notice.<sup>8</sup> Grant of the Petition would support the public interest in media diversity while denial of it would have no material public benefit.

Respectfully submitted,

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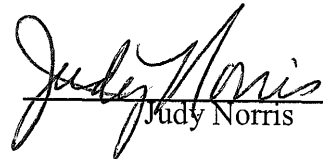
<sup>7</sup> March 13 Opposition, p. 6, March 21 Opposition, p. 6, March 26 Opposition, **p. 8**.

<sup>8</sup> *See* March 21 Opposition, p. 5, March 26 Opposition, **p. 8**.

CERTIFICATE OF SERVICE

I, Judy Norris, a legal secretary with the law firm of Holland & Knight LLP hereby certify that a true and correct copy of the foregoing Reply of ReelzChannel, LLC was deposited in the U.S. Mail, first-class, postage prepaid, on the 7th day of May, 2007, to the following:

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